

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. CR 17-124
)	Milwaukee, Wisconsin
vs.)	
)	July 26, 2019
MARCUS HUTCHINS,)	11:30 a.m.
)	
Defendant.)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE J.P. STADTMUELLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

Benjamin W Proctor
Benjamin P Taibleson
United States Department of
Justice (ED-WI)
Office of the US Attorney
517 E Wisconsin Ave - Rm 530
Milwaukee, WI 53202
414-297-4525
Fax: 414-297-1738
benjamin.proctor@usdoj.gov
benjamin.taibleson@usdoj.gov

U.S. Probation Office: JAMES P. FETHERSTON (414) 297-1736

U.S. Official Reporter: JOHN T. SCHINDHELM, RMR, CRR,
Transcript Orders: WWW.JOHNSCHINDHELM.COM

Proceedings recorded by computerized stenography,
transcript produced by computer aided transcription.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONT'D:

For the Defendant:

Brian E Klein

Baker Marquart LLP
777 S Figueroa St - Ste 2850
Los Angeles, CA 90012
424-652-7800
Fax: 424-652-7878
Email: bklein@bakermarquart.com

Marcia C Hofmann

Zeitgeist Law PC
25 Taylor St
San Francisco, CA 94102
415-830-6664
Email: marcia@zeitgeist.law

Emily Stierwalt

Baker Marquart LLP
777 S Figueroa St - Ste 2850
Los Angeles, CA 90017
424-652-7800
Fax: 424-652-7850
estierwalt@bakermarquart.com

P R O C E E D I N G S

(Call to Order of the Court at 11:28 a.m.)

THE CLERK: The Court calls the *United States of America vs. Marcus Hutchins*, Case No. 17-CR-124, for a sentencing hearing. May I have the appearances beginning with the Government?

MR. PROCTOR: Good morning, Your Honor. Benjamin Proctor and Benjamin Taibleson appearing for the United States.

PROBATION OFFICER: Good morning, Your Honor. Jim Fetherston from Probation.

MR. KLEIN: Good morning, Your Honor. Brian Klein on behalf of Marcus Hutchins.

MS. HOFMANN: Marsha Hofmann on behalf of Marcus Hutchins.

MS. STIERWALT: Emily Stierwalt on behalf of Marcus Hutchins.

MR. KLEIN: And Mr. Hutchins is here, out of custody.

THE COURT: Thank you. Good morning, counsel, and good morning to Mr. Hutchins, and good morning to our probation officer.

Marcus Hutchins, back on May 2nd of this year, you entered pleas of guilty and were later adjudged guilty of two of the offenses charged in the ten-count indictment pending against you, that being the superseding indictment.

The offense charged in Count 1 constitutes a violation

1 of Title 18 of the United States Code, Section 371; the offense
2 charged in Count 2 constitutes a violation of Title 18 U.S.C.
3 § 2512(1)(c)(i), and 2.

4 We have now reached that stage of these proceedings
11:30 5 where it becomes the duty of the Court to address several
6 questions to both you and counsel. First of all, Mr. Hutchins,
7 have you had sufficient opportunity to review the revised
8 presentence report prepared in your case under date of July 23rd
9 of this year, as well as the addendum to that report which bears
11:31 10 the same date, July 23rd?

11 THE DEFENDANT: I have, Your Honor.

12 THE COURT: Thank you.

13 Similarly, counsel for the defendant, Mr. Klein and
14 your colleagues, have you had an opportunity to review those
11:31 15 documents?

16 MR. KLEIN: We have, Your Honor.

17 THE COURT: And are there any facts disclosed in the
18 numbered paragraphs that either you or your client take issue
19 with or otherwise seek clarification on?

11:31 20 MR. KLEIN: There is one minor one, Your Honor. And I
21 would turn your attention to paragraph 147 of the revised PSR.
22 It's on page 28.

23 THE COURT: All right.

24 MR. KLEIN: I believe under the new calculation by the
11:31 25 Probation Office in the report, Mr. Hutchins is now in Zone B

1 and he actually would be eligible for probation. So I believe
2 this should be changed to say he is eligible for probation now.

3 THE COURT: Thank you.

4 Mr. Fetherston?

11:32 5 PROBATION OFFICER: That's correct, Judge.

6 THE COURT: All right. Anything else?

7 MR. KLEIN: No, Your Honor.

8 THE COURT: Thank you.

9 Mr. Proctor, Mr. Taibleson, any objection either as to
11:32 10 the facts or information in the revised presentence report?

11 MR. PROCTOR: Not with regard to the facts, Your
12 Honor.

13 THE COURT: Thank you.

14 That being the case and the Court having no
11:32 15 independent basis to challenge or otherwise disagree with any of
16 the facts or finding them to be lacking, the Court does herewith
17 adopt all of the facts as detailed in the numbered paragraphs of
18 the July 23rd revised presentence report, which now takes us to
19 the matter of the advisory sentencing guidelines applicable in
11:33 20 Mr. Hutchins' case.

21 As we are aware, the Probation Department has
22 submitted the following metric: It includes a total offense
23 level of 11, criminal history category I which, in combination
24 with the offense level, carries a guideline term of imprisonment
11:33 25 of 8 to 14 months, followed by a term of at least 1 but not more

1 than 3 years of supervised release, a fine of not less than
2 \$4,000, nor no more than \$40,000, and, finally, a \$100 special
3 assessment on each count or a total special assessment of \$200.

4 Mr. Klein, do you and your client and your colleagues
11:34 5 accept that guideline metric as recommended by the Probation
6 Department?

7 MR. KLEIN: Yes, Your Honor.

8 THE COURT: Thank you. Mr. Proctor and Mr. Taibleson,
9 I appreciate you submitted objections to the guideline
11:34 10 submission which are addressed in the July 23rd addendum. Based
11 on the Probation Department's analysis, do you wish to be heard
12 further on the objections or do you accept the Probation
13 Department's calculations?

14 MR. PROCTOR: Your Honor, since we have submitted a
11:34 15 lot of paper on this, I do want to just briefly address this
16 issue.

17 Our issue is with the calculation that results in no
18 assessment based on loss under 2B1.1. And ultimately if the
19 Court wants to take this under 3553(a), I understand, but I do
11:35 20 want to just emphasize what the government's position is on
21 that.

22 There's really no argument here that the malware was
23 not deployed and that people were not harmed. The argument is
24 that the government isn't able to identify specific individuals
11:35 25 who suffered due to the deployment of the malware.

1 And that's largely due here to the nature of the
2 offense and the defendant's actions. There's a decentralized
3 aspect to this where the malware was sold to individuals, it
4 could be customized to them, and there was no real centralized
11:35 5 command and control infrastructure to go on. It was distributed
6 around the world.

7 Further, the sales were conducted via encrypted
8 communications, personal messages. Malware was designed to run
9 undetected. They were sold -- these items were sold using
11:36 10 aliases, hiding the anonymity of the internet. And there are
11 marketplaces where information that can be harvested using this
12 malware is then resold, which further adds layers in trying to
13 tie the specific items to the defendant's conduct.

14 So I submit that loss exists, but it's very difficult
11:36 15 to pin down in this case; therefore, we opted for a "gains
16 theory" as permitted under 2B1.1. And to that end, we tried to
17 seek out sales records from the data that was available to us.

18 Two points on that. One, we scraped the data from
19 Liberty Reserve databases, which is where and how the FBI had
11:36 20 purchased UPAS from the defendant and his accomplice, and that's
21 where the money went. So we know that that account was used in
22 connection with the offense.

23 And we also used comments in the advertisements for
24 Kronos where commenters would say, *hey, I purchased this, this*
11:37 25 *aspect isn't working*, and Mr. Hutchins' accomplice would

1 response, you know, and somebody saying, *okay*, you know, *it will*
2 *be fixed*. Things like that that indicate purchases.

3 Now, in the -- in the PSR and in the addendum, the --
4 and in the objection, the defendant objected to the Liberty
11:37 5 Reserve numbers. There wasn't a specific objection to the
6 comments numbers, the numbers that we developed from the
7 comments section which showed 13 separate sales of Kronos. And
8 we knew the price of that based on what was advertised and what
9 the government had purchased it for, which is in the 2,000 to
11:37 10 \$3,000 range.

11 So I stand by our numbers that we've submitted, which
12 I believe allows the Court to make a reasonable estimate of
13 gains in this case based on the conduct of the defendant and his
14 accomplice in selling the malware and we -- that's between 47
11:38 15 and \$60,000. But even if we get rid of the Liberty Reserve
16 money that the defendant has objected to, we still are left with
17 about \$26,000, if we base it on 13 sales at \$2,000 per sale,
18 which still would give a -- an adjustment of four levels.

19 So, again, the government isn't ultimately
11:38 20 recommending a specific sentence here. If the Court wants to
21 take this all under 3553(a), I understand, but that's the
22 government's position.

23 Thank you, Your Honor.

24 THE COURT: All right, thank you.

11:38 25 Do counsel for Mr. Hutchins have anything more you'd

1 like to add beyond your submissions to the Probation Department?

2 MS. HOFMANN: Your Honor, I would just like to briefly
3 respond to the government's points just now.

4 It's the government's burden to prove pecuniary loss
11:39 5 by a preponderance of the evidence. And the probation office
6 has reviewed the evidence presented here by the government
7 before, and we agree with the probation office that this
8 evidence is just too speculative to establish any sort of
9 reasonable estimate of loss here.

11:39 10 We agree that there was some form of loss, but it's
11 impossible to quantify. And the Liberty Reserve data simply is
12 a selection of transactions that are not clearly tied to any
13 particular activity that the government is guessing had to do
14 with sales of UPAS.

11:39 15 We simply agree with the probation office. We think
16 that there is some loss here. Certainly Mr. Hutchins and his
17 co-conspirator had some kind of gain, but we don't know what it
18 is, and we think that it simply doesn't justify an adjustment
19 for sentencing purposes.

11:40 20 THE COURT: All right. Anything further, Mr. Proctor?

21 MR. PROCTOR: No, Judge.

22 THE COURT: Well, fortunately, at least in this branch
23 of the court, this is only the second of these computer-related
24 cases that I've had before me. And fortunately, or
11:40 25 unfortunately, the last one was almost a generation ago — Chad

1 Davis, 99-CR-183. And Mr. Proctor's colleagues, Mr. Eric Klumb,
2 and I forget who the other assistant was, made similar arguments
3 because of an intrusion on a Department of Defense server. And
4 there was some hard loss. As I recall it was 7 or \$8,000, much
11:41 5 less than what the government was seeking at sentencing.

6 And in Mr. Davis's case the guidelines, as I recall,
7 keeping in mind they were mandatory back then, called for a
8 sentence of 6 to 10 months. And Mr. Davis, like Mr. Hutchins,
9 was, in the vernacular, what might be best described as a
11:41 10 youthful offender, but the conduct was a felony.

11 And the Court made the observation, now almost 20
12 years ago, that the real issue, and it's still prevalent in
13 today's world, and that is the matter of cybersecurity is an
14 incredibly challenging issue, even in today's world. And the
11:42 15 protocols that are in place, as we know from both this set of
16 facts and the WannaCry debacle, that the protocols are really
17 woefully, woefully inadequate. And we live in a world today
18 where security is everything, whether it's in finance, whether
19 it's in healthcare, whether it's in transportation, whether it's
11:42 20 in law enforcement, manufacturing, I mean, the list goes on and
21 on.

22 And obviously there's a body of talent out there in
23 the face and name of Marcus Hutchins who can be drawn upon to
24 bring this matter of cybersecurity within our reach so that we
11:43 25 don't see these cases, even though, generationally, different

1 years, different faces.

2 And so when it comes to the whole matter of loss or
3 gain, I think the thing that's most striking is the comparison
4 between UPAS and Kronos and WannaCry. Because if one looks at
11:43 5 the loss and the number of infections -- not hits, infections --
6 over 8 billion throughout the world with WannaCry and over
7 120 million alone with the UK. And thankfully, because of
8 Mr. Hutchins' foresight and ability to put in place in a matter
9 of hours a kill switch, it makes -- the facts of the case that
11:44 10 is before the Court today virtually pale in comparison. And we
11 need to keep in focus not only the sentencing guidelines, but
12 the societal interest as a whole in determining what ought to be
13 an appropriate, fair, just and reasonable sentence.

14 I dare say, had this case been prosecuted and the
11:45 15 WannaCry issue come up six months after Mr. Hutchins was
16 formally processed here in this district, this morning, soon to
17 be this afternoon, we'd be looking at a motion pursuant to U.S.
18 Sentencing Guideline 5K1.1 for a downward departure.

19 And the facts of this case are such, quite candidly,
11:45 20 that this investigation began two or three years before
21 Mr. Hutchins was actually arrested. And obviously law
22 enforcement was totally unaware, because WannaCry hadn't even
23 been released much less kill-switched before Mr. Hutchins was
24 brought before the bar of justice.

11:46 25 So the Court has these overarching considerations, not

1 only the matter of the loss versus infections, versus hits,
2 versus the hard reality that there's a lot more to not only the
3 facts that underlie this case, but the facts that are associated
4 with the individual who is before the Court today for
11:46 5 sentencing.

6 And so I have no doubt, absolutely none, having spent
7 over 16 years of my career as an assistant U.S. attorney and the
8 U.S. attorney in this district, that the government coming
9 before the Court today with no recommendation on sentencing is
11:46 10 very thoughtful, but it telegraphs to the Court that they put
11 themselves in a corner by putting pedal to the metal for over
12 two years in litigating this case that perhaps in the bigger
13 picture with another set of facts and circumstances
14 undifferentiated from those that are before the Court, that this
11:47 15 case could have been resolved at least a year, 15 months ago,
16 but, unfortunately, it wasn't.

17 I appreciate the government is entitled to pursue the
18 case as it deems appropriate, but we're now beyond that point.
19 But the Court is still left with having to make the value
11:47 20 judgment on what the totality of the facts and circumstances
21 presented in terms of what is most appropriate that is fair,
22 just and reasonable in terms of sentencing.

23 And with all due respect to the matter of loss and the
24 matter of gain, I believe, at the end of the process, the
11:48 25 Probation Department got it right in their original submission,

1 and that is the revised presentence report, and they also got it
2 right in recommending that the government's objections on the
3 matter of loss and gain be overruled. And that is the Court's
4 position.

11:48 5 Everyone has weighed in. I haven't seen so much paper
6 in a particular sentencing -- and I'm not critical of anyone on
7 that matter, but we reach a point where a decision has to be
8 made and the Court has made its. If the government believes
9 that the matter richly deserves more attention, they can
11:49 10 certainly appeal the Court's ruling with regard to these
11 guidelines.

12 All of this in the loss amount really is driven just
13 by how difficult these cases are, even in 2019. They were just
14 as difficult in Mr. Chad Davis's case, as I said earlier, now
11:49 15 almost a generation ago.

16 So on the guidelines that are before the Court, the
17 Court is constrained to adopt the guidelines that the Probation
18 Department initially submitted and reaffirmed; that is: A total
19 offense level of 11; criminal history category I; guideline term
11:50 20 of imprisonment of 8 to 14 months, followed by a term of at
21 least 1 but not more than 3 years of supervised release; fine of
22 not less than \$4,000 nor no more than \$4 million; and, finally,
23 a \$200 special assessment.

24 Having made those determinations, counsel,
11:50 25 particularly Mr. Klein and your colleagues, do any of you have

1 any reason to advance, now late morning, as to why the Court
2 ought not proceed today with the imposition of sentence in this
3 case?

4 MR. KLEIN: Your Honor, no. I understand we'll have a
11:51 5 chance to make a few additional arguments to Your Honor.

6 THE COURT: Certainly. And the Court has reviewed the
7 lengthy sentencing memoranda that the government prepared, that
8 you prepared, that you've further submitted material on. And I
9 would note, parenthetically, that many of these submissions were
11:51 10 made under seal. And to the extent that counsel wish to draw
11 upon them beyond what is before the Court in writing, you're
12 either going to have to waive the sealing as to comments you
13 make or ask that the Court seal the courtroom during those
14 presentations that are drawn from sealed material.

11:51 15 So if you want to confer about that with Mr. Proctor
16 and Mr. Taibleson, feel free, and we can prepare accordingly.

17 (Counsel confer.)

18 MR. KLEIN: Your Honor, thank you for giving us that
19 moment.

11:52 20 We spoke with Mr. Taibleson and Mr. Proctor, and we
21 will waive the sealing as to our comments. There are things we
22 would still like to be kept under seal, and we will be discrete
23 and judicious in what we say.

24 THE COURT: Certainly. Well, you should appreciate
11:52 25 I've spent a lot of time reading the materials this week and

1 before. And I appreciate the fact that this is the first time
2 that I have met your client. He's had many encounters with the
3 magistrates and the Court has reviewed the magistrates'
4 recommendations on pretrial motions and ruled on those, but I
11:53 5 have not personally been introduced to your client until today.

6 MR. KLEIN: We understand. It is somewhat of a
7 strange process in that way, that you don't meet until you
8 sentence him. He's here.

9 THE COURT: Certainly. To the extent, Mr. Klein and
11:53 10 Ms. Stierwalt and Ms. Hofmann, if you'd like to address the
11 Court individually and if Mr. Hutchins wishes to make some
12 comments, now is your opportunity.

13 MR. KLEIN: Yes, Your Honor. Thank you. I'm going to
14 make a few short comments. We did submit a substantial amount
11:54 15 of briefing and we appreciate your attention to it and thorough
16 reading of it.

17 And so what I'd like to start with is just
18 acknowledging some of the family and friends who are here today.

19 Marcus's mother and father are here from England.

11:54 20 Some of the friends whose letters are included in the
21 brief. Tarah Wheeler is also here with her husband. Another
22 friend, Tran. They've flown here to support him. We think they
23 represent a global community of people who support Mr. Hutchins,
24 and he will return from this to people who love and support him.

11:54 25 I want to address a couple points that the government

1 raised and I'll be as brief as I can be, Your Honor. One thing
2 the government alludes to is that what Mr. Hutchins was doing
3 was his job. His job was cybersecurity.

4 He did work for Kryptos Logic, but on that day with
11:55 5 WannaCry he was doing more than his job. He was actually on
6 vacation. And his job, as the head of Threatened Intelligence
7 at Kryptos Logic, was in helping identifying malware, but not
8 ransomware. WannaCry is ransomware.

9 So the companies that employed and hired Kryptos Logic
11:55 10 were not hiring him to do what he did that day. He was running
11 around town on vacation, heard about this, and came back and
12 saved the world.

13 And I think that's an important point. Of course, if
14 he was even doing his job, he should still be lauded. If a
11:55 15 firefighter saves not just one building but the world from
16 burning down, they're going to be lauded. And that's what
17 happened that day.

18 A couple other points. As a foreigner, Mr. Hutchins
19 is not eligible to some of the benefits if he was sentenced to
11:55 20 prison that a U.S. citizen would get, including the right to be
21 released to a halfway house or be on home detention. One of the
22 reasons we're asking for probation, which I know Your Honor is
23 aware of.

24 The government raises a bunch of points about
11:56 25 deterrence. And I would think there is no disagreement with

1 anybody here in this courtroom that Mr. Hutchins does not need
2 specific deterrence. He is not going to commit these crimes
3 again. He already is way past that in his life.

4 As for the argument of general deterrence, I would
11:56 5 just note that is one of the many 3553(a) factors. And it's not
6 the only one, of course and you consider it with all the other
7 ones including his -- who he is.

8 I would note that he has spent two years caught up in
9 this legal system. He accepts responsibility for his actions.
11:56 10 He's not trying to make excuses. This process played out the
11 way it did. But he has already suffered, frankly, somewhat
12 greatly. He's been pulled away from his job, the thing he cares
13 about. He's had to live in a foreign country. He's been
14 separated from his family and friends. He will return to the UK
11:57 15 as a felon. Now, he won't lose the benefits that a felon here
16 would lose who is a citizen, but it will, for the rest of his
17 life, follow him around. And so I think Your Honor should keep
18 that in mind when you consider general deterrence.

19 A couple other brief points. The government's
11:57 20 sentencing position spends seven pages talking about this crime.
21 We don't dispute any of that. They spent one page talking about
22 Mr. Hutchins. That should be reversed, Your Honor.

23 As you indicated at the start of your comments,
24 security is everything. That is a motto that Mr. Hutchins lives
11:57 25 by too. And I think that Your Honor is not giving that short

1 shrift based on your introductory remarks already.

2 And, just briefly, by looking at the last -- how the
3 government chooses to end its sentencing position, which is
4 talking about, again, focusing on deterrence. And it states on
11:58 5 page 12 of its brief, "... but this does not permit him or
6 anyone else to pretend his criminal conduct was insignificant."

7 Mr. Hutchins does not pretend it's insignificant. His
8 life shows that. What he's done shows that. And that would not
9 be the message he'd want anyone else to have either.

11:58 10 The government then goes on to say, "Like a man who
11 spent years robbing banks, and then one day came to realize that
12 was wrong, and even worked to design better security systems, he
13 deserves credit for his epiphany."

14 We agree. "But he still bears responsibility for what
11:58 15 he did." We don't disagree, but I would want to talk for a
16 moment about that analogy.

17 Mr. Hutchins is not a bank robber. There was no
18 violence. He was not -- he was youthful, as Your Honor
19 indicated. That analogy is far from perfect. He was most akin
11:59 20 to someone in his youth who created lock picks to help people
21 rob banks. And we're not downplaying that. That's a serious
22 crime too.

23 But, when you think about that, someone who creates
24 lock picks to help people rob banks and we can't identify what
11:59 25 banks they robbed or if they got any money or -- we know there

1 were more than 10, we don't dispute that, but when they say *and*
2 *then worked to design a better security system*, that's not what
3 Mr. Hutchins did. He didn't work just to design a better
4 security system, he worked to stop bank robberies. And he
11:59 5 stopped a lot of bank robberies, Your Honor. I think you know
6 that from our briefing. And I think when you focus on that for
7 a moment, he stopped the world's biggest bank robbery. A rogue
8 nation set out in May 2017 to shut down the world, and he
9 stopped it. He deserves credit for that, and I think Your Honor
12:00 10 is giving him credit for that.

11 It's been a real privilege to represent him. And with
12 that, I'm done.

13 THE COURT: All right, thank you. Do your colleagues
14 wish to add any comments, Mr. Klein?

12:00 15 MR. KLEIN: No, Your Honor. I think Mr. Hutchins has
16 a statement if this is the time.

17 THE COURT: Certainly.

18 MS. HOFMANN: Your Honor, I have a copy of it if you
19 would like to follow along. May I approach?

12:00 20 THE COURT: Certainly.

21 (Brief pause.)

22 THE DEFENDANT: Your Honor, when I was a teenager, I
23 made a series of bad decisions which led me to being involved in
24 writing and selling malware over a period of some years.

12:01 25 I deeply regret my conduct, the crimes in which I was

1 involved, and the harm which resulted from the code I had
2 written. I eventually discontinued my involvement in creating
3 malware, but I wish I could go back and undo all the damage I
4 had caused.

12:01 5 I now work in cybersecurity, focusing mostly on
6 tracking and stopping the same kinds of malware that I was once
7 involved in. As a hobby, I also liked to create educational
8 content, teaching people about malware in the context of
9 detecting and preventing it. I do this in the hope that I can
12:01 10 steer people away from the path in which I once took, even
11 before people knew of my mistakes.

12 Throughout the process of this case, I have not only
13 had to face my past, but reflect on the harm caused by the
14 malware I once developed, some which I was not even aware of.

12:02 15 The future reinforces that I have no intention to go back to
16 that life. My plan is to continue my work in security, but if
17 possible I would like to dedicate more time to teaching the next
18 generation of security experts.

19 Finally, I'd like to apologize to the victims of the
12:02 20 malware I developed, the colleagues and acquaintances who felt
21 betrayed upon learning of my past, my friends, and most
22 importantly my family who have endured much financial and
23 emotional stress as the result of me being arrested in a foreign
24 country.

12:02 25 Thank you for taking the time to listen to this.

1 THE COURT: Thank you, Mr. Hutchins.

2 Anyone else like to speak this afternoon on behalf of
3 Mr. Hutchins?

4 MR. KLEIN: No, Your Honor.

12:03 5 THE COURT: Thank you.

6 Mr. Proctor, Mr. Taibleson, do you have some thoughts
7 you'd like to add?

8 MR. PROCTOR: Thank you, Your Honor.

9 We do have a unique case here, Your Honor. We have a
12:03 10 serious offense, and we also have some very unique positive
11 attributes associated with the defendant. WannaCry was a big
12 deal. No doubt about it. And I'll talk a little bit more
13 about that in a bit. But I want to talk about why the
14 government considers this offense particularly serious.

12:03 15 The development of malware can be a lucrative and
16 prestigious business for those who want to get into it and then
17 they feel safe hiding around the world through the anonymity of
18 the internet. And these are crimes that affect everyone, either
19 through personal victimization, or through increased costs
12:04 20 associated with remedying the victimization of others, or
21 through dedication of more resources continually toward
22 cybersecurity.

23 Now, the banking trojans that Mr. Hutchins created had
24 one purpose, and that was to make it easy for others to steal
12:04 25 personal information, specifically banking credentials, which

1 can be used to steal identities and drain life savings.

2 Malware is designed to secretly record all the
3 keystrokes on the victim's computer, steal log-in credentials,
4 for any type of business, email, social media accounts, and
12:04 5 basically allow a takeover of the victim's computer.

6 Now, the parties agree that this malware, particularly
7 Kronos, was used to infect computers around the world and this
8 is further shown through some of the reports and studies
9 included in our memo.

12:04 10 Reports of Kronos infections go back to 2014, the year
11 that Mr. Hutchins and an accomplice were first observed selling
12 that product, advertising it. They continued through 2015 and
13 2016. And Mr. Hutchins bears some responsibility for the
14 fallout associated with this malware, and I appreciate his
12:05 15 comments today where he does take such responsibility.

16 I know in the defendant's submissions to the Court,
17 they take issue with some of the facts and figures showing the
18 impact that Kronos has had in terms of how many alerts have been
19 raised. The government's numbers on that are sound. We're not
12:05 20 pulling them from the wind. They come from leading
21 cybersecurity firms who implement protocols to limit false
22 positives which are just a reality of this type of research.
23 And that data is relied on with confidence by researchers,
24 businesses and governments in assessing cybersecurity threats.

12:06 25 Moreover, just because an alert may reflect an

1 interception of Kronos, that doesn't mean there can be no
2 infection as argued by the defendant. Successful interceptions
3 require the most up-to-date cybersecurity protections, and
4 that's hardly uniform across all computer users. Indeed that
12:06 5 malware is only effective if it actually infects computers.
6 Attackers, therefore, get their product tested and altered
7 through crypting in order to beat back these type of
8 protections.

9 Now, our data shows that there have been over 200
12:07 10 variants of Kronos spanning from 2014 to 2019. And one way that
11 those variants are created is through crypting, as I mentioned,
12 and that was a service offered by the defendant and his
13 accomplice. And each of those variants can impact countless
14 computers.

12:07 15 In the end, what the data shows is that attackers have
16 been using and continue to use the products developed by
17 Mr. Hutchins to steal information from victim computers. Now,
18 was it the most prolific thing out there? No. But it's
19 maintained a constant presence since 2014, activity rising and
12:07 20 falling at times, affecting all sectors of the economy, in the
21 U.S. and in other countries.

22 Now, switching gears a bit to the defendant himself.
23 We agree with the defense that there are many, many positive
24 attributes for the Court to consider. We agree that
12:08 25 Mr. Hutchins was young when he committed this offense. Though,

1 this isn't an excuse, he did know right from wrong, and he
2 continued his criminal conduct for several years. But, it's not
3 uncommon for young people to make a poor decision and then come
4 to realize it later and make different decisions.

12:08 5 That's here. Mr. Hutchins has generally -- genuinely
6 left his criminal path behind him. And I've read the many
7 letters submitted by the defense, from Mr. Hutchins' friends,
8 his family, his coworkers and acquaintances. They're very
9 moving letters and they do show the positive impact he's had on
12:08 10 many lives.

11 And again, his role in stopping WannaCry, it was a
12 major event. He rightly deserves the credit and notoriety he's
13 received for helping to stop what was on track to be an
14 unbelievable cyber disaster.

12:08 15 And he's accepted responsibility, he's entered a
16 guilty plea, and he's expressed remorse for his criminal
17 conduct. All of that is to his credit.

18 Your Honor, in the end we have a serious offense, one
19 in which the defendant tried to make money for himself, making
12:09 20 it easy for other people to victimize and steal information from
21 others. He knew what he was doing. He did it without concern
22 for the lives that would be ruined. And once that genie came
23 out of the bottle, it can't be put back in. It's still out
24 there. Variations of it are still being used today. And, on
12:09 25 the other hand, we have a very unique individual with very

1 significant positive contributions to our society. And per the
2 terms of the plea agreement, we aren't recommending a specific
3 sentence. We defer to the judgment of Your Honor in balancing
4 all these factors.

12:09 5 Thank you.

6 THE COURT: Thank you, Mr. Proctor.

7 Anything further that the defense would like to either
8 comment on or submit?

9 MR. KLEIN: Your Honor, we addressed our response in
12:10 10 all our briefing. I don't think we have anything else to say.
11 I think we've thoroughly addressed all those issues and our
12 feelings on the government's loss numbers and claim number of
13 victims beyond 10.

14 Unless you have specific questions of us about that, I
12:10 15 think we've addressed those.

16 THE COURT: All right, thank you.

17 Well, Mr. Hutchins, the judge that you are before
18 today recently passed his 32nd anniversary as an Article III
19 district judge. You're pretty close to being number 2200 of the
12:10 20 defendants that I have sentenced over the last 32 years. Each
21 and every case is different, and your case is just as unique as
22 most unique cases that come before the Court. And, frankly, all
23 of that makes the job that His Honor has so interesting, because
24 we see all sides of the human existence, both young, old, career
12:11 25 criminals, those like yourself who may have strayed from what we

1 would expect not only in your homeland in England, but here in
2 these United States.

3 And I appreciate the fact that one might view the
4 ignoble conduct that underlies this case as against the backdrop
12:12 5 of what some have described as the work of a hero, a true hero.
6 And that is, at the end of the day, what gives this case in
7 particular its incredible uniqueness.

8 It is very difficult, even in the context of
9 sentencing guidelines, to begin to put together a mosaic that
12:12 10 would ultimately lead to what has been described in the
11 submissions as a fair, just, and reasonable sentence that is one
12 that is sufficient, but not greater than necessary to achieve
13 the goals of sentencing.

14 And there are many, many facets, not only of you and
12:12 15 your personality, but many facets of the core conduct of this
16 case versus what occurred with the matter of WannaCry.

17 And then there is the other ingredient that not a lot
18 of attention has been spent on because it's one of those
19 unquantifiables, other than the core fact, and that is, you have
12:13 20 been away from your family and your homeland for over two years.
21 And there's something to be said for basically being, for lack
22 of a better description, caught up in the legal morass that
23 attends a very, very complicated set of facts and circumstances
24 that have international, indeed global implications.

12:14 25 And while this case may have taken a different

1 trajectory with different hands at the tiller as it were early
2 on, we then can't regenerate the course of what occurred once
3 this case was submitted and filed. Just like the return of the
4 superseding indictment. These are matters over which the Court
12:14 5 has no direct control except that there are consequences that
6 flow from them, both for the government as well as the defense.
7 And I am not sure, from even a review of the plea agreement or
8 of the history of this case, precisely what it was that lead to
9 your decision to resolve the case in the manner in which it's
12:15 10 been resolved.

11 To be sure, again, against the backdrop of more than
12 16 years as a prosecutor, it is fair, reasonable and
13 appropriate, and we're now at the final chapter of what ought to
14 be the ultimate disposition.

12:15 15 And as everyone associated with this case is so well
16 aware, and as so well aware is the judge, this case has a series
17 of complex interfaces that require a bit of distillation,
18 particularly against the backdrop of the 3553(a)(2) factors that
19 the Court must draw upon in imposing an appropriate sentence.

12:15 20 Because, unlike Mr. Chad Davis, the guidelines in this case,
21 whatever they be, whether they be the government's suggestion of
22 more than 20-month sentence or those that the Court has adopted
23 from the Probation Department, they're advisory. They are not
24 mandatory. Just like there is no mandatory minimum sentence
12:16 25 associated with this case.

1 Perhaps in the context of WannaCry, if you were the
2 defendant in the WannaCry case with over 8 billion infections
3 and humongous losses, there perhaps should be a minimum
4 mandatory sentence. But the reality is, those that are
12:16 5 perpetrating these massive intrusions as they have been
6 described, are not typically anywhere near these United States
7 given the reality that the internet is accessible worldwide.

8 And then you add all of the layers of the deep down
9 under in which these communications and malware and ransomware
12:17 10 are launched, it's very, very difficult for law enforcement to
11 access them until such time as the effects are widespread and
12 known.

13 And more here in these United States, there have been
14 millions of individuals whose credit ratings have been affected
12:17 15 as a result of hacking of systems, whether it be at Target or
16 other retailers or credit card providers, et cetera, et cetera.
17 And it's going to take individuals like yourself who have the
18 skillset, even at the tender age of 24 or 25, to come up with
19 solutions, because that is the only way we are going to
12:18 20 eliminate this entire subject of, as the Court described it
21 earlier, the woefully inadequate security protocols that are in
22 place for our entire panoply of information technology systems.
23 Whether it's individual computers or servers or networks or
24 websites, they're all caught up in the same milieu of inadequate
12:18 25 security.

1 And it is very much like our individual security.
2 Keeping in mind whether it's Judge Stadtmueller leaving the
3 courthouse, we are not cloaked with or embosomed in security
4 that we are not subject to whether it's being assaulted or shot
12:19 5 at or what have you.

6 These instrumentalities, although we are talking about
7 cybersecurity, are prevalent in so much of everyday life that we
8 endure as a society. And it only occurs the right way when
9 well-intentioned people respect the rights of others. Whether
12:19 10 it's their personal security, whether it's their financial
11 security, whether it is their computer security, their home
12 security, their children's security, the list just goes on and
13 on and on.

14 And so you can begin to appreciate in the parlance of
12:20 15 sentencing just how serious this sort of conduct if fully
16 implemented can be because it's so devastating and it's
17 uncontrollable particularly when you don't know where it is
18 coming from. That is the real conundrum when it comes to
19 security. We know there's a potential, but until you know where
12:20 20 it is coming from it is very, very difficult to intercept and
21 take remedial action.

22 There's also the component of deterrence. And this
23 has been discussed extensively throughout, as well as respect
24 for the law. I quite agree with your approach and that of your
12:21 25 counsel that this is not a matter that ought to be of primary

1 concern of this court, because you turned the corner, if you
2 will, before being arrested in connection with the matter before
3 the Court. I appreciate the investigation started years before.
4 But in terms of your actual appearance before the bar of
12:21 5 justice, it occurred after you turned the corner.

6 Now, on the one hand that makes you a hero. On the
7 other hand, it doesn't totally wipe out the ignobility of the
8 conduct that serves as the predicate for the Court's sentence
9 today. But it's certainly to your credit that, without any
12:22 10 encouragement, working for an FBI agent or security in England
11 that you stepped up to the plate without any expectation either
12 of notoriety or consideration for potential charges stemming
13 from UPAS or Kronos. So all that is to your credit.

14 Just as it is important for the Court to keep in mind
12:22 15 the relative age and the relative culpability, if you will, of a
16 young person who may not have matured to the point of being
17 able, at the end of the day, to exercise what parents would say,
18 good judgment. Good judgment is everything. And without good
19 judgment you could be 140 IQ and have all the requisite talent
12:23 20 to do great things. But commensurate with all of the ability to
21 do those great things, as has been exhibited in this case, is
22 the ability to, along the way, to acquire that most important of
23 traits, and that is the exercise of good judgment.

24 There is no question, in looking at you and your
12:23 25 background, that in a very, very poignant way you have chosen to

1 be more of an introvert as opposed to extrovert. And you have
2 been very circumspect in selecting friends who for the most part
3 are on the same page as Marcus Hutchins, that is, wanting to do
4 the right thing at all times and be guided by a set of
12:24 5 principles and morals that keep you on the straight and narrow
6 such that you would never find yourself in front of a court,
7 particularly in the context of being a defendant in a criminal
8 prosecution.

9 So all of that, too, weighs very considerably in the
12:24 10 Court's determination today as to what the ultimate sentence
11 ought to be.

12 Yes, there is the matter of deterrence. It's
13 important generally. Because, as we all know, and why it is
14 that it is so incredibly important that as a society we continue
12:25 15 to aggressively deal with cybersecurity issues because it has
16 become such an integral part of our society. And if we don't
17 take the appropriate steps to protect the security of these
18 wonderful technologies that we rely upon each and every day, it
19 has all the potential, as your parents know from your mom's
12:25 20 work, to raise incredible havoc in the workplace, whether it's
21 hospital care, whether it's transportation systems, whether it's
22 the matter of manufacturing or financial or just communication
23 generally. Just think about what we would be doing today if we
24 didn't have computers or cell phones or tablets. It has totally
12:26 25 eclipsed the way of life, whether it's here in these United

1 States or the world.

2 So, all of those components are very much part and
3 parcel of the Court's analysis this afternoon as to reaching
4 this question of ultimately what ought to be a fair, just and
12:26 5 reasonable sentence.

6 There is no question that for you personally, had you
7 become aware of the work that might be available to you, whether
8 here in the United States or England with a firm such as Kryptos
9 Logic, you may never have ventured into what brings all of us to
12:27 10 this courtroom today.

11 Keeping in mind, there is no limit, as we know from
12 many, many who have labored long and hard in technology, that
13 putting the effort into that which brings positive results
14 carries with it not only the adulation of being recognized, but
12:27 15 the rewards that far transcend the matter of adulation or
16 financial success.

17 And you have all of those potentials in a very, very
18 unique way. Whether you will be able to exercise any of that in
19 the future back in these United States, I guess is a bit of an
12:28 20 open question given the fact that the sentence that the Court
21 imposes today may, at the end of the day, preclude your coming
22 back to the United States in the absence of either a waiver
23 because of your unique skillset, or potentially a pardon for the
24 conduct that underlies the case.

12:28 25 And while the Court has no pardon power, that is a

1 matter that is reserved to the Executive Branch of government.
2 And what the protocols are for that, given the totality of the
3 facts and circumstances in this case, is truly left for another
4 day, another person, another administrative body within the U.S.
12:29 5 Department of Justice and the Executive Branch to make the value
6 judgment call on. But it's certainly something that ought not
7 go unnoticed, particularly against the backdrop of what occurred
8 and your efforts with regard to WannaCry and what might lie
9 ahead in terms of your future abilities, whether back in England
12:29 10 or worldwide, to deal with the nettlesome issues that the Court
11 has addressed more than once today.

12 In terms of protecting the public from other criminal
13 conduct, again, I hearken back to what is already self-evident
14 in the old adage of *that which is obvious need not necessarily*
12:30 15 *be restated*, but it's certainly worth emphasizing that Marcus
16 Hutchins turned the corner with regard to any further conduct
17 that would be remotely connected to what led to the charges in
18 this case ever occurring again. There are just too many
19 positives on the other side of the ledger, whether they be
12:30 20 academic, whether they be financial, whether they be rewards of
21 a wholly different type, but they're all there.

22 So we reach a point in balancing all of these
23 considerations and, at the end of the process, the Court is left
24 to make the final call as to what ought to be an appropriate
12:31 25 sentence.

1 And the final call in the case of Marcus Hutchins
2 today is a sentence of time served, with a one-year period of
3 supervised release.

4 I don't know whether the supervised release in this
12:31 5 case is ultimately going to be viewed as academic because we
6 don't know, as of Friday, July 26, 2019, what lies ahead in
7 terms of Mr. Hutchins' ability to continue to reside or work in
8 the United States. But in order to ensure that there be some
9 follow-on with regard to supervision, my staff have prepared a
12:32 10 series of 14 conditions of supervised release and I'm going to
11 circulate those to counsel. And if you would be so kind,
12 Mr. Klein and Ms. Hofmann, to review those with your client, and
13 suggest any changes from either you or the government.

14 THE DEFENDANT: Thank you, Your Honor.

12:32 15 (Brief pause.)

16 MR. KLEIN: Your Honor, we've reviewed the
17 conditions -- proposed conditions. We just have two small
18 comments?

19 THE COURT: Certainly.

12:34 20 MR. KLEIN: Nos. 12 and 13. Mr. Hutchins plans to
21 return home. I assume that's contemplated in that type of
22 instruction. He just needs to tell his probation officer he's
23 going to fly home.

24 THE COURT: Certainly. There is nothing further after
12:35 25 today that requires that he stay here. There may be an issue

1 getting his passport back so he can depart and be allowed back
2 into England.

3 MR. KLEIN: And then no. 13, Your Honor, he doesn't
4 have plans for that, but I just think it should be clear that
12:35 5 it's limited to the United States. He'll be back in England. I
6 don't know what's going to happen and he has no plans, but I
7 think it should be clear that it's U.S. law enforcement.

8 THE COURT: Certainly. That's certainly agreeable
9 with the Court.

12:35 10 Mr. Proctor?

11 MR. PROCTOR: No objections, Your Honor.

12 THE COURT: Mr. Fetherston, can you advise everyone
13 what the process will be to allow Mr. Hutchins to leave and how
14 soon?

12:35 15 PROBATION OFFICER: At this point, Your Honor, I would
16 recommend that the supervised release be allowed to commence in
17 the Central District of California. That'll allow the defendant
18 to return there. At that point he can seek to have his passport
19 returned to him from the Pretrial Services office. He may
12:36 20 already be in possession of it today in order to have traveled
21 here. At that point, it's up to him when he makes arrangements
22 for travel. His supervision time will continue to run until it
23 expires in one year from today's date.

24 THE COURT: Mr. Klein, do you have any thought on what
12:36 25 the timeline may be to depart?

1 MR. KLEIN: I know he wants to return back to Los
2 Angeles and get his stuff in order and return home. I don't
3 know how quickly he'll be able to do that, but he does plan to
4 return home relatively quickly.

12:36 5 THE COURT: All right. Well, the judgment and
6 commitment order will reflect that the Court will designate the
7 Central District of California as to the place that he is to
8 report.

9 Obviously given today is a Friday, the earliest would
12:37 10 be on Monday. Mr. Fetherston can notify his counterparts in
11 Los Angeles of the sentence that the Court has imposed today.
12 I'm not sure whether it will be processed fully today. I'm
13 certain that the court will get it out on Monday morning. And
14 once they receive it and if he notifies them that he is going to
12:37 15 make arrangements to return to England, he'll have to be
16 processed there because he will be subject to their jurisdiction
17 as long as he remains in the U.S. There's nothing about the
18 Court's judgment or sentence that require that he remain in the
19 United States.

12:38 20 And what I'm seeking to avoid is that he be allowed to
21 return on his own and not be taken into custody by Immigration
22 and Customs.

23 MR. KLEIN: His plan is to return on his own,
24 Your Honor, yes.

12:38 25 THE COURT: No, I understand that's what he would

1 like, but we don't need any more publicity about this and having
2 another statistic. That's my point.

3 MR. KLEIN: We appreciate that, Your Honor.

4 THE COURT: So for all of the reasons that the Court
12:38 5 has discussed with the input of counsel, this now becomes the
6 formal sentence of the Court:

7 Marcus Hutchins, on May 2nd of this year you entered a
8 plea of guilty and were adjudged guilty both as to
9 Counts 1 and 2 of the underlying superseding indictment, Count 1
12:39 10 charging a violation of Title 18 § 371, and Count 2 charging a
11 violation of Title 18 § 2512(c)(i), and 2.

12 The Court having asked the defendant why judgment
13 should not now be pronounced and pursuant to the Sentencing
14 Reform Act of 1984, it is the judgment of the Court that you,
12:39 15 Marcus Hutchins, be committed to the custody of the Bureau of
16 Prisons to be imprisoned for a period of time served as to each
17 of Counts 1 and 2, to operate to run concurrent with one another
18 for a total sentence of time served.

19 The Court further determines that the defendant does
12:40 20 not have the financial ability to pay any fine and accordingly
21 waives any fine in his case.

22 Upon release from imprisonment he shall be placed on
23 supervised release for a term of one year, subject to each of
24 the 14 conditions, two of which were modified, until such time
12:40 25 as he departs from the United States.

1 He will be released to the Central District of
2 California where he is to report on Monday, July 29th to that
3 office to receive further instructions, as well as disclose his
4 travel plans to return to his native country.

12:40 5 In accordance with the terms of the Mandatory Victims
6 Restitution Act of 1996, as provided for in 18 U.S.C. § 3013,
7 the Court is obliged to impose a special assessment in the
8 amount of \$100 as to each count of conviction for a total
9 special assessment of \$200, which is due and payable immediately
12:41 10 at the Office of the Clerk of the Court, which is located in
11 Room 362 of this building.

12 In addition, pursuant to the terms of the plea
13 agreement the offenses charged in Counts 3 through 10 inclusive
14 of the superseding indictment will stand dismissed.

12:41 15 Having entered pleas of guilty to the conduct charged
16 in Counts 1 and 2 of the superseding indictment, and the Court
17 having imposed today what it believed to be an appropriate,
18 fair, just and reasonable sentence that is one that is
19 sufficient but not greater than necessary to achieve the goals
12:42 20 of sentencing, I now advise Mr. Hutchins that if he believes the
21 guilty pleas he earlier entered were either involuntary or
22 contrary to law, or that the Court imposed a sentence today that
23 is contrary to law, I now advise him of his right of appeal.

24 Should you elect to appeal, Mr. Hutchins, Mr. Klein
12:42 25 and Ms. Hofmann are obliged to file a notice of appeal on your

1 behalf within 14 days of the docketing of the judgment and
2 commitment order, otherwise you will have effectively waived any
3 right of appeal.

4 If you are unable to pay the cost of an appeal you do
12:42 5 have the right to seek relief to appeal in forma pauperis.

6 And as you are aware, Counsel, pursuant to the
7 teachings of the U.S. Supreme Court in *Rowe vs. Flores-Ortega*
8 decided in February of 2000, you have an obligation to confer
9 with your client as to the merit of any appeal and be guided by
12:43 10 any request that he may make of you in that regard.

11 In the event he elects to forego any appeal, I would
12 invite you as his counsel to formally notify the Court, whether
13 by pleading or letter, indicating that you have discussed with
14 your client his right of appeal and that he has elected to
12:43 15 forego such an appeal.

16 In addition to the communication, whether it be a
17 notice or a letter, I would also ask that you have your client
18 sign that communication acknowledging having been advised of his
19 right of appeal and that he has elected to forego such an
12:43 20 appeal.

21 Are there any other matters that the Court need
22 address, Mr. Klein or Mr. Proctor?

23 MR. PROCTOR: Not from the United States.

24 MR. KLEIN: None from the defense, Your Honor.

12:43 25 THE COURT: Very well. The Court stands in recess.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE BAILIFF: All rise.

(Proceedings concluded at 12:44 p.m.)

* * *

C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
Reporter for the United States District Court for the Eastern
District of Wisconsin, do hereby certify that the foregoing
pages are a true and accurate transcription of my original
machine shorthand notes taken in the aforementioned matter to
the best of my skill and ability.

Signed and Certified August 1, 2019.

/s/John T. Schindhelm

John T. Schindhelm

John T. Schindhelm, RPR, RMR, CRR
United States Official Reporter
517 E Wisconsin Ave., Rm 324,
Milwaukee, WI 53202
Website: WWW.JOHNSCHINDHELM.COM